

AGENCY:	Planning Commission
MEETING DATE:	August 28, 2019
PREPARED BY:	S. Perkins
PRESENTED BY:	S. Perkins

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Inland Land Use and Development Code Amendment 1-19 (ILUDC 1-19)

APPLICANT: City of Fort Bragg

PROJECT: ILUDC Amendment to permit and regulate cannabis businesses in the City of Fort Bragg, including retail, manufacturing, distribution and limited cultivation associated with retail.

LOCATION: Inland area of the City of Fort Bragg (Attachment 1)

APN: Multiple

LOT SIZE: N/A

ZONING: N/A

ENVIRONMENTAL DETERMINATION: Negative Declaration (Attachment 6)

SURROUNDING LAND USES: N/A

APPEALABLE PROJECT: **Can be appealed to City Council**
 Can be appealed to California Coastal Commission

BACKGROUND

The State of California has passed the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016) since the City's cultivation and dispensary ordinances became effective (2009 and 2005, respectively). Each State law places various levels of regulatory responsibility on local jurisdictions. In response to the new legislation, both the Public Safety Committee and the City Council have discussed the regulation of cannabis uses in the City of Fort Bragg. The following Inland Land Use and Development Code (ILUDC) amendment would implement the changes directed by Council.

PROJECT DESCRIPTION

This amendment to the Municipal Code involves changes to Chapter 18, the Inland Land Use and Development Code (ILUDC). Proposed Sections 18.42.057 and 18.42.059 would apply to retail cannabis businesses (dispensaries) and delivery-only cannabis retail businesses (respectively), and changes are proposed to the land use tables of ILUDC Article 2 to specify where retail cannabis

businesses are allowable with discretionary permits. The land use tables in Article 2 would also be amended to remove cannabis manufacturing as a use type. Instead, cannabis manufacturing uses will be regulated under the existing policies for manufacturing/processing use types. Changes are proposed to the definitions in Article 10, and the specific use regulations for cannabis manufacturing in Article 4 would be rescinded. A table summarizing the proposed amendments is below, and the full changes are included as **Attachments 2 through 4**:

Ordinance Amendments for Cannabis Businesses	
Code Section	Proposed Change(s)
Chapter 18.22	<ul style="list-style-type: none"> ▪ Revise Commercial Land Use Table 2-6 to include Cannabis Retail as a land use, and indicate its allowance in the CBD, CG and CH districts with Minor Use Permit approval and subject to the Specific Use Regulations in Chapter 18.42.057 and 9.30. ▪ Revise Commercial Land Use Table 2-6 to include Cannabis Retail – Delivery Only as a land use, and indicate its allowance in CG and CH districts with Minor Use Permit approval and subject to the Specific Use Regulations in Chapter 18.42.059 and 9.30.
Chapter 18.24	<ul style="list-style-type: none"> ▪ Revise Industrial Land Use Table 2-10 removing Manufacturing/processing – Cannabis as a land use type. ▪ Revise Industrial Land Use Table 2-10 to include Cannabis Retail – Delivery Only as a land use, and indicate its allowance in IH and IL districts with Minor Use Permit approval, subject to the Specific Use Regulations in Chapter 18.42.059 and 9.30, and add a footnote indicating the use is only allowable as accessory to an approved cannabis business engaged in manufacturing, distribution and/or processing.
Chapter 18.42	<ul style="list-style-type: none"> ▪ Add Section 18.42.057 – Cannabis Retail to provide Specific Use Regulations for retail cannabis uses. ▪ Add Section 18.42.059 – Cannabis Retail – Delivery Only to provide Specific Use Regulations for delivery only retail cannabis uses. ▪ Rescind Section 18.42.055 – Cannabis, Manufacturing.
Chapter 18.100	<ul style="list-style-type: none"> ▪ Revise definition of Cannabis Dispensary to Cannabis Retail. ▪ Add definition of Cannabis Retail – Delivery Only ▪ Rescind definition of Cannabis Manufacturing. ▪ Revise definitions of Wholesaling and Distribution, Manufacturing-Heavy, -Medium, and -Light to include industrial cannabis uses.

ANALYSIS

Since the passage of the Medical Marijuana Regulation and Safety Act (MMRSA, 2015) and the Adult Use of Marijuana Act (AUMA, 2016), the State of California, through its Bureau of Cannabis Control, has been developing the laws, regulations and licensing requirements for cannabis businesses. On January 16, 2019, the California Office of Administrative Law (OAL) approved the Bureau of Cannabis Control’s revised cannabis regulations.

The City of Fort Bragg adopted Ordinance 928-2017 in early 2017 regulating cannabis manufacturing uses following passage of the AUMA. Ordinance 928-2017 was applied and paid for by an applicant seeking to establish a cannabis manufacturing business in the City. Subsequently, the City has not updated its retail (dispensary) or cultivation ordinances, which were adopted prior to recreational legalization in California. On February 12, 2018, the City Council provided direction to staff to revise the City’s dispensary regulations. At the time of Council direction, state policy had not settled whether or not cannabis businesses may hold multiple license types to participate at multiple points of the supply chain. The state’s policy framework has shifted to allow more flexibility in license types, per the newly-approved Bureau of Cannabis Control’s cannabis regulations. The state also made other minor changes to their regulations for the City of Fort Bragg to consider—specifically the allowance of cannabis businesses near schools and other sensitive uses with local approval.

Previous Council direction for a revised dispensary ordinance, explained in further detail below, prohibited businesses from operating under multiple state license types (i.e. cannabis manufacturing uses are not permitted where Council directed staff to allow dispensary uses). Conversations with entrepreneurs seeking to establish dispensaries in the City have expressed concern to staff over these limitations. On February 25, 2019, the Council considered the changes to state policy and directed staff to prepare an ordinance to allow some integration of state cannabis business license types.

Additionally, the City’s existing cannabis manufacturing ordinance does not specifically address state license types that are commonly associated with manufacturing uses, such as testing, packaging, warehousing and distribution. The Council directed staff to revise the manufacturing ordinance to address these other uses. The following table summarizes cannabis business activities, and where they may be located per the draft ordinance as primary uses:

Primary Use	CBD	CG	CH	CN	IL	IH	Coastal ⁵
Retail – Storefront only	MUP ¹	MUP ¹	MUP ¹	--	--	--	--
Retail – Delivery only	--	MUP ¹	MUP ¹	--	MUP ²	MUP ²	--
Retail – Delivery and Storefront	MUP ¹	MUP ¹	MUP ¹	--	--	--	--
Manufacturing/Processing	--	--	--	--	P/UP ³	P/UP ³	--
Distribution	--	--	--	--	P	P	--
Testing	--	--	--	--	P	P	--
Cultivation ⁴	--	--	--	--	--	--	--

P = Permitted, MUP = Minor Use Permit, UP = Use Permitted

- Notes: 1. Dispensaries may conduct manufacturing, distribution, processing or cultivation activities as long as the retail use is the primary activity at the business.
 2. Delivery-only retailers are only allowable in the industrial districts as long as a manufacturing, distribution, and/or processing use is the primary activity at the business.

3. Manufacturing/Processing activities meeting the ILUDC definition of “Manufacturing-Light” would be permitted. Activities defined as “Manufacturing-Medium” would require a Use Permit in IL, but would be by-right in IH. Activities defined as “Manufacturing-Heavy” would be prohibited in IL, and require a Use Permit in IH.
4. Council provided direction on July 24, 2019 for staff to develop a cannabis cultivation ordinance, which would allow cultivation as a primary use (i.e. greenhouses), and would be reviewed by the Planning Commission at an upcoming meeting.
5. The Coastal Land Use and Development Code would need to be amended to incorporate cannabis businesses, pending Council and Planning Commission review.

In addition to the amendments proposed for the ILUDC, the Council will also consider adopting a revised Chapter 9.30, which would apply to all future cannabis businesses (**Attachment 5**). Chapter 9.30 contains the procedures for applicants, including review of security plans by the Police Chief and background checks on applicants, and standard operating requirements. These standards include:

- *Submit floor plans indicating the purpose and security of each room*
- *Diagrams showing security camera coverage, lighting and access restrictions*
- *Proposed hours of operation*
- *Record keeping and recall procedures*
- *Solid waste disposal plan*
- *Product supply chain information*
- *Odor prevention plan*

Chapter 9.30 is not a part of the ILUDC, and as a result, is not part of this ILUDC amendment application. It is Council’s intent to adopt the revisions to Chapter 9.30 at the same time the Council reviews the ILUDC amendment recommendation from the Planning Commission. Staff recommends that the Planning Commission include a condition of approval on this proposed ILUDC amendment, that Chapter 9.30 be adopted in conjunction with the ILUDC amendment so that the requirements of 9.30 supplement the changes to the ILUDC.

The following provides an explanation of the proposed ILUDC amendment, including the context leading to the Council’s direction.

Retail (Dispensaries)

Cannabis retail uses (dispensaries) can operate as storefront shops, delivery-only businesses, or a combination of both. The City does not presently allow cannabis retail businesses for recreational marijuana. The City Council discussed these various business types and recommended that a draft ordinance include the following:

- *Allow storefront dispensaries in the CBD, CH and CG zoning districts with a Minor Use Permit. Storefront dispensaries may have a delivery component.*

In order to implement this direction, the draft ordinance amends Article 2 to add “Cannabis Retail,” and permits these uses in the CBD, CH and CG districts with a Minor Use Permit. The proposed definition of Cannabis Retail in Article 10 states that these uses “sell products directly to on-site customers” and that “sales may also be conducted by delivery.”

- *Allow delivery-only dispensaries in the CH and CG districts, and allow delivery-only dispensaries only in conjunction with cannabis manufacturing and distribution uses in the industrial districts.*

The proposed ordinance amends Article 2, adding “Cannabis Retail – Delivery Only,” and permits these uses in the CH, CG, IL, and IH districts. For the IL and IH districts, a footnote is proposed in the ordinance stating that delivery-only dispensaries “shall only be allowable as an accessory use to a cannabis business engaged in manufacturing and/or distribution.”

In addition to the location and permitting standards in Article 2, the ILUDC amendment would make changes to Article 4 to prescribe standards for dispensaries—both storefront and delivery. The standards require applicants to outline the activities involved in the business, and limits the hours they may operate (between 9 a.m. and 9 p.m.), prohibits drive-through sales, and states that dispensaries may not be located within a 600-foot radius of schools, day care centers, or youth centers.

Article 4 also states that the maximum quantity of permits issued for Cannabis Retail and Cannabis Retail – Delivery Only uses shall be determined by Council resolution. The Council has discussed allowing a maximum of four storefront dispensaries and four delivery-only dispensaries. The Planning Commission could consider recommending a specific number to Council for their resolution.

Microbusinesses

Cannabis microbusinesses are facilities that engage in a combination of retail, distribution, manufacturing and/or cultivation. Small scale activities, such as packaging, labelling, pre-rolling or blending require manufacturing and/or distribution licenses from the state. Drying or trimming cannabis to prepare the plant for resale requires a cultivation license from the state. The Council received input from the public that stressed the importance of cross-licensing for businesses to compete within the industry. Council seeks an ordinance that would:

- *Allow small-scale manufacturing, distribution and/or cultivation activities as accessory to retail uses, thereby allowing cannabis “microbusinesses.”*

The proposed ILUDC amendment includes Section 18.42.057(G), stating that “accessory uses [to cannabis dispensaries] may include activities that require multiple state cannabis licenses, including, but not limited to manufacturing, distribution, processing and/or cultivation.” This language allows cannabis manufacturing, distribution, processing and cultivation uses in conjunction with a dispensary. These other activities, however, shall be “accessory” to the retail store, which the ILUDC defines as “a use customarily incidental to, related and clearly subordinate to a primary use on the same parcel, which does not alter the primary use.” The review authority (the Director for a Minor Use Permit, and the Commission on appeal), would review any non-retail activities of a microbusiness application to ensure they are accessory, and could condition the permit such that the accessory activities do not become the primary use of the business. Additionally, Section 18.42.057(G) prohibits the use of volatile solvents in the manufacturing activities accessory to retail uses.

Cannabis Manufacturing/Distribution/Processing/Testing

The existing ILUDC allows cannabis manufacturing in the industrial zoning districts with a Use Permit. Presently, the ILUDC prohibits “accessory uses” in conjunction with cannabis manufacturing uses, limiting the potential for manufacturers to hold distribution, processing and/or cultivation licenses from the state. After receiving more information on the industry needs, the Council requested an ordinance amendment that would:

- *Allow any combination of industrial-like cannabis activities in the IL and IH zoning districts.*

To implement this direction, the proposed ordinance amendment removes the land use “cannabis manufacturing” from the land use tables. Instead, any cannabis manufacturing, distribution, processing or testing facility would be interpreted the same as other industrial use types. For example, a cannabis distribution facility may fall under the permit requirements for “Wholesaling and Distribution,” an existing land use in the code. Similarly, a cannabis manufacturing facility may be considered either light-manufacturing, medium-manufacturing or heavy-manufacturing, depending on the nature of the facility. The ILUDC amendment revises the definitions of these existing land uses to include cannabis businesses as examples of allowable activities.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) requires analysis of agency approvals for projects. Under CEQA, adoption of changes to a zoning ordinance constitutes a project, and staff has completed the required CEQA review. Staff prepared a Negative Declaration for the project and determined that the proposed amendment could not have a significant effect on the environment. The Negative Declaration is included as **Attachment 6**.

The Planning Commission will not adopt the Negative Declaration, as the adoption of a resolution in support of the proposed changes does not constitute a project under CEQA. The Negative Declaration would be adopted by City Council, if they adopt the proposed amendment to the ILUDC.

RECOMMENDED PLANNING COMMISSION ACTION

Hold a hearing, close the hearing, deliberate and adopt the resolution (**Attachment 7**) to City Council recommending approval of the ILUDC amendment.

ALTERNATIVE PLANNING COMMISSION ACTIONS

Hold a hearing, deliberate and provide staff with additional direction regarding proposed amendments to the ILUDC regulating cannabis businesses.

AMENDMENT FINDINGS

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| 18.94.060(B)(1)(a) | The proposed amendment is consistent with the General Plan and any applicable specific plan; |
| 18.94.060(B)(1)(b) | The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and |
| 18.94.060(B)(2) | The proposed amendment is internally consistent with other applicable provisions of the Development Code. |

SPECIAL CONDITIONS

1. Adoption of the ILUDC amendments shall only occur in conjunction with the adoption of revisions to Chapter 9.30 that prescribe the process for cannabis business applications and standard cannabis business operating requirements.

ATTACHMENTS

1. Location Map
2. Article 2 Revisions
3. Article 4 Revisions
4. Article 10 Revisions
5. Chapter 9.30 – Cannabis Businesses
6. Negative Declaration
7. Resolution to Council